

when received, do in contemplation of law belong to *Campbell*. The executors are the representatives of the partnership by Legislative creation, and in the place of the surviving partner acting for the partnership, and are subject to all such actions as the person in whose place they stood was; and of course to an action for this debt, and consequently to the set off offered; which is no more than a cross action by the Defendant against the Plaintiff.—

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In this view of the case, both the interest of *Campbell*, and *Campbell* himself, by his representatives the executors, are now before the court. This is substantially and properly to be considered as the action of *Campbell*, to recover a debt the law deems due and payable to himself, both now and when recovered; and therefore, the debt sued for, and that offered to be set off, are reciprocal and mutual debts within the meaning of our act of Assembly, and are perfectly clear of the objection endeavored to be raised by *Mr. Williams* for want of mutuality. It is not so universally true as is stated by *Mr. Williams*, that the debt to be set off, must be a debt recoverable by the Defendant against the Plaintiff. *Esp.* 240. 1 Term 112, 115. I much doubt whether the case cited from *Buller* 179, would be so adjudged at this day. It certainly could not have been so adjudged to save the right of survivorship to the wife. 5 Term 493, proves that a debt due from a surviving partner, may be set off in an action brought by him for a debt due to the partnership—there was not such precise mutuality as *Mr. Williams* contends for—that was the very same case as this now before the court. In the present case, the whole partnership interest is yet in *Campbell* the survivor, and the suit for his benefit; at the same time that the debt sought to be set off, is reduced to certainty by a judgment against that very surviving partner. The assignment operates nothing, the act of Assembly appoints a substitute for *Campbell*, with respect to the remedy. If these two latter circumstances create no difference, as I think they do not, the present case is precisely similar to that last cited, and ought to be governed by it; for as to the origin of the debt, that is of no consequence whatever. 3 Term Rep. 507. The law only requires mutuality of action, and certainty as to the amount of the debt to be set off. If this set off is not allowable, a general inconvenience will follow, for then a partner may contract debts, commit tres-

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